

Sex Reassignment Technology: The Dilemma of Transsexuals in Islam and Christianity

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Abstract The birth of people with confused or ambiguous sex makeup as a biological fact since the annals of history has posed the challenge of accommodating them within the binary gender of sociocultural systems. In this process, the role of religion as a defining factor in social engineering has been paramount. Major religions, such as Islam and Christianity, have addressed this issue within the frame of their God-ordained laws by devising a set of moral and legal imperatives specific to the “third gender.” Modern developments in medicine and biology, however, have made sex reassignment possible for this category of people, today called transsexuals. The question is: How do Islam and Christianity respond to it. After presenting an analytical view of both Muslim scholars and Christian religious authorities on the legitimacy of sex reassignment for transsexuals, this paper attempts to explore if such a dilemma can be resolved.

Keywords Binary gender · Religion · Sex reassignment · Transsexuals · Islam and Christianity

Introduction

Human species overwhelmingly subsume two opposing dichotomous sexes, namely male and female. By and large, masculinity and femininity are biological and resultantly, each one of the sexes are culturally, in most societies, expected to possess certain personal traits and assigned certain roles (Noraini Mohd Nor 2005, p. 1). However, the order of biological engineering sometimes coupled with social orientation always create people of ambiguous

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sexual identity mainly of two sub-varieties: (1) *inter-sexed (hermaphrodites-those with some biological or physiological abnormality); (2) or those anatomically males or females but exhibiting behaviors appropriate for the opposite gender* (p. 2).¹ The latter are variously referred, such as “the third sex, psychosexual, effeminate, mixed sex” (p. 1). This group in terms of gender is regarded as people with “identity crisis” (p. 1). Therefore, to the social scientists, it seems that the solution is that today’s society must accept them as they are and treat them in the same way as people of pre-modernity accommodated *eunuchs* (castrated war captives) in their midst. For instance, Byzantine employed them to look after the women as chamberlains and some Muslim rulers like Mamluks made them to guard the harem (the inner sanctum of the ruler’s household where their women folk resided) (pp. 2–4).

One may not agree with the above analogy as transsexuals of today can hardly be equated with sexually de-capacitated castrated war captives of pre-modernity. Because transsexuals do not consist of castrated male captives but are a genre of males or females who “feel trapped in the body of the opposite sex” and thus either had already gone through sex reassignment processes (p. 4),² or are inclined to do so at present, known as *mukhannath* in Islamic tradition. Now, the question is: Can their seemingly *de facto* declaration of changed gender per force entitle them to different kind of treatment at the legal and cultural plane? The answer is polemical in both Islamic jurisprudence and Christian theological point of view. Accordingly, in the pages that follow, first, we present an “eye-bird view” of the procedure involved in sex reassignment; next, we delineate a critical view of the issue from both Islamic and Christian perspectives; lastly, we try to examine whether dilemma of transsexuals can be overcome at least at the level of the world’s two major religious traditions.

Sex Reassignment Medical Procedures

Depending on the degree of the desire for transsexuals to achieve sex change, there are two levels of medical intervention, namely hormonal and surgical.

In tandem with other measures in terms of social support and legal measure, the process of “sexual transitioning” (Anonym 2011a, b) may start with hormonal therapy in the form of pills or injection and other hormonal replacements to enhance normally transsexuals’ feminine desires. To proceed with this therapy, the candidate would be advised to undergo some psychological counseling in view of the reverse implications that hormonal changes may entail at least six months prior to resorting to it (Anonym). The process in the case of male-to-female transsexuals involves the use of estrogen therapy which helps “suppress the physical male characteristics and encourages physical female characteristics. Electrolysis of facial and bodily hair is still necessary, however, as estrogen does not halt hair growth” (Anonym). But in the case of female-to-male transsexuals, it requires “androgens which does lower the pitch in voice” (Anonym 2011a, b; Harold 2011). Some transsexuals stop at this stage without proceeding to more drastic measures like surgery. For instance, in

¹ It is to be noted that some authors do not distinguish between the intersex and transsexuals. We, however, agree with sociological configuration as advanced by social scientists. For example, see Sheik Mufti Allie Haroun 2008, 260.

² Abraham carried out some kind of sex reassignment surgery in 1931 in Germany, followed by the case of a team of doctors having it done in 1953 in Denmark which has proliferated since then both in terms of research and currency at least in the developed and the developing worlds. See *ibid*, 4.

Malaysia, according to one study out of 73 transsexuals, only six have undergone sex change surgery, while in another research out of 50 transsexuals, 23 of them have done so (Noraini Mohd Nor 2005, pp. 8–9). However, in the case of those desiring to transform further, a sex change surgery will be the option today.

Sex reassignment surgery (SRS) or gender reassignment surgery (GRS) is a surgical measure through which “the physical transitioning of a transsexual or transgendered male-to-female or female-to-male” can be achieved. Medically SRS “entails removing the genitalia of one sex and constructing genital organs of the opposite sex.” Male-to-female operation of this description continues to gain currency and if carried out professionally is able to bring to the transgender “orgasm, or at least a reasonable degree of erogenous sensitivity” (Anonym 2011a, b). The essential distinction of this process is that unlike sex hormonal therapy which is resorted to largely by transsexuals “a man or woman feeling entrapped in a body of the opposite gender, called gender dysphoria.” It has purely medicinal value as it provides treatment for “newborns with intersex deformities” as well (Anonym). To the medical profession, ironically, “technical consideration in both cases favors successful conversion to a female rather than a male gender.” Newborns with ambiguous sex organs will almost always be assigned the female gender, unless their penis is at least an inch long. Whatever their chromosomes, “they are much more likely to be socially well adjusted as females, even if they cannot have children” (Anonym).

In the case of psychological transsexuals, as opposed to inborn people with sexual abnormality, the procedure of sex surgery is undertaken under strict conditions. The reason is twofold, namely the irreversible nature of the change and the need for preparedness to cope with psychological and physiological adaptation to changed gender identity. That is why a doctor before agreeing to accept the candidate requires the certification by two certified psychiatrists or psychologists that he/she is appropriate for SRS (Anonym).

Thereafter, the SRS process begins with the surgeon subjecting the candidate to various laboratory tests, for HIV, obesity, or other venereal diseases. Once satisfied, then he/she briefs the candidate about health implications of such a choice and gets his consent for the treatment.³

At the surgery stage, as a matter of anatomical variation, the process somewhat differ from one gender type to another. In the case of male-to-female SRS, the procedures are as follows (Anonym)⁴:

1. Discontinuation of hormone therapy for duration of 3 weeks prior to the surgery which otherwise increases the risk of excessive bleeding during the surgery;
2. Removing the penile muscle and tissue, the testicles and reshaping external genitalia to appear female and natural; and
3. Creating a vagina, deep enough to allow satisfactory intercourse for those who desire intercourse. To do so, there are two most favored procedures. First, “it involves using the inverted skin of the penis to line the newly created vaginal cavity. An incision is made from the base to the head of the penis, and the skin is peeled away from the shaft while remaining attached to the torso.” To preserve sexual stimulation, “a portion of the penis head (the glands) with its nerve supply in tact is formed into a clitoris.” Second, it involves “using what are called ‘full thickness’ skin grafts.” These grafts are obtained from hairless portions of the sides or flanks, and the penile skin is then used to create the labia *minora* and the scrotum skin to create the labia

³ Ibid.

⁴ This section has been adopted from the above web page with minimal adaptation, see Ibid.

majora. The width and depth of the vagina are usually greater than with the inverted penile skin, and “the new vagina has less of a tendency to shrink over time” (Anonym).⁵ To prevent the vagina from closing, “a balloon-type device called a vaginal stent is inserted and remains in place for the length of the hospital stay, which averages around 6 days with complete bed rest” (Anonym).

Post-surgery attendance to the patient ranges between 6 and 24 months. The transgendered individual must observe regular checkup schedules to be monitored by her physician. *If major complications such as shrinking of the vagina results the sex surgery will have to be repeated.*

In order to enhance her femininity, the transgendered person may opt for further medical procedures, such as breast enhancement techniques (saline-filled breast implant), returning to female hormone regimen, cosmetic thyroid cartilage reduction (tracheal shaving), cricothyroid approximation (toning feminine voice) or even laser-assisted voice adjustment (LAVA) known as endoscopic surgery and other surgical procedures for reshaping of the chin and cheeks, forehead contouring and rib removal. But it is mandatory that she must go for follow-up *medical checkups annually* (Anonym 2011a, b: Harold 2011).

In the case of female-to-male surgery, on the other hand, the success rate of sex reassignment surgery thus far has not been encouraging. This is “due to the difficulty of building a functioning penis from the much smaller clitoral tissue available in the female genitals” (Anonym). In consequence, “in some instances, simply removing the breasts adequately satisfies the female-to-male transsexual. Others use a prosthetic penis that is either glued or strapped on, while yet others choose to undergo a phallic plastid (plastic surgery to attach a penis)” (Anonym). The phallic plastid known as penis construction involves the following procedures (Anonym):

1. It begins less than a year after the uterus and ovaries are removed, and
2. It involves constructing a tube-shaped structure from the abdomen or upper thigh skin of the candidate and attaching it over the clitoris to preserve as much sexual stimulation as possible.

It should be noted that *the truth of the matter is that the constructed penis as such though can be used for sexual intercourse is not perfect. To top it all, this kind of surgery “often creates unsatisfactory urination ability”* (Anonym).

Islamic Legal Perspective

In the Islamic paradigm “dimorphic gender classification” subsumes, as a general rule, males and females (Sachedina 2009: p. 191). The *raison d’être* for this is that in the Islamic view, religious rules of conduct whether moral or legal are gender oriented. Hence, the supreme value is that Muslims must be content with what God has created in them and should not tamper with their primary natural created characteristics. The Qurān succinctly declares “God creates what he wills: He gives to whom He wills females, and gives to whom He wills male or He couples them, both males and females: and He makes whom He wills barren” (Qurān, 42: 49–50). Man-made changes to one’s nature is described as

⁵ However, another procedure involves using a piece of the rectosigmoid colon instead of skin grafts, or inverted penile tissue. This technique allows for the creation of a deep and lubricated vagina but is a more invasive and dangerous procedure and rarely the technique of choice. See ibid.

following the plan of Satan as it wowed to God, saying “I will assuredly ...lead them astray, and fill them with fancies... and I will command them and they will alter God’s creation” (Quràn, 4: 119).

However, the Quràn acknowledges the existence of transsexuals, and the Sunnah somewhat characterizes this category and the intersex. While delineating women’s code of ethics for social encounter with the opposite sex, the Quràn ordains them to guard their chastity from all males except those within the lawful family circle and “male attendants free of sexual desires,” (Quràn 24: 31) termed as *ghayr uli al-irbah*. *Ghayr uli al-irbah*, according to some erudite exegetes were those effeminate men with no feelings of desire toward women (Al-Qurtubi (n.d), Vol. 12, p. 234). Intersex, on the other hand, was given recognition in the Sunnah where the Prophet in an answer to a question as to determination of the sex of a child born with two opposite sex organs pointed that the deciding factor in such a case is by looking at the organ from which it urinates (Abu Dawud (n.d), Vol. 4, p. 228). Accordingly, the traditional Islamic jurisprudence detailed the law and ethics for these abnormal genders by classifying the first type as *mukhannath* (effeminate men) and the second as *khuntha* (hermaphrodite).

Mukhannath literally means a man whose voice tone resembles woman’s voice (Ibn Manzur (n.d), Vol. 2, p. 145). Technically, however, the jurists defined *mukhannath* variously. To Hanafis and Hanbalis, *mukhannath* are two types: one with tender effeminate voice and having no desire toward women and displaying no anti-social behavior. If this be the case, they will be free to enter the women’s quarter. The other ones, though physically the same are morally corrupts (*fasiq*), and thus, should be barred from interaction with women (Al-Sarakhsî 1986, Vol. 12, p. 382). The Shafîis and Malikis essentially characterized *mukhannath* as a man whose voice resembles woman’s voice and exhibits several other effeminate features in talking, looking, thinking and judgment. Thus, so long as he does not have sexual feelings toward women can be regarded as *mukhannath* of acceptable type for the purpose of social encounter with women (Al-Shirbini (n.d), Vol. 4, p. 430; Al-Khurashi (n.d), Vol. 2, p. 273).

However, the jurists formulated a set of different laws for the *mukhannath* of the erotic type based on a Prophetic tradition, “God cursed the males who appear like females and the females who appear like males” (Karim 1994, Vol. 1, p. 613). Accordingly, unlike popular belief, Islamic tradition does not condemn *mukhannath* all and sundry as it is flexible in dealing with transsexuals of biological type, in terms of voice or bodily features. Stressing this, Ibn Hajar maintained that the Prophetic condemnation is confined to those who deliberately deviate from the norm of their set genders with which they are born. It does not extend to those who innately suffer from some kind of behavioral abnormality. Instead, they need to be supported to re-adjusts themselves to their assigned gender roles (Ibn Hajar 1985, Vol. 10, p. 332).⁶

However, erotic *makhannath* was subjected to several legal restrictions including 1) he was prohibited from committing homosexuality, such as sodomy (Al-Nawawi (n.d), Vol. 12, p. 317); 2) he was not allowed to lead Muslim prayers as he/ lacked moral rectitude except under dire conditions according to some Malikis and Hanbalis (Al-Nawawi (n.d), Vol 4, p. 287; Ibn Hazm (n.d), Vol. 4, p. 212; Al-Mardawi 1957, Vol. 2, p. 252); 3) he was not allowed to mingle with women (Al-Shirbini (n.d), Vol. 3, p. 128; Al-Sarakhsî 1986, Vol. 12, p. 382); 4) he was not allowed to marry a woman if he indulged in homosexuality

⁶ The jurists discussed various rehabilitative measures which the state can initiate if such *mukhannath* people do not want to conform, such as exile, imprisonment. see al-Sarakhsî, *al-Mabsut*, 27:205; al-Shirbini, *al-Mughni al-Muhtaj*, 4: 192; al-Bahuti, *Kashshaf al-Qinâ*, 6:128.

since God forbids the marriage of a chaste women to a sexually promiscuous person (Al-Halim (n.d), Vol. 15, p. 321)⁷; 5) he was not encouraged to accept employment in slaughter houses or cooking jobs according to some Malikis (Al-Hattab 1978, Vol. 3, p. 342; Ibn Qudama (n.d), Vol. 11, p. 36)⁸; 6) he was not regarded as a credible witness for the purpose of testifying before the court (Al-Nawawi (n.d.) Vol. 20, p. 227; Ibn Qudama (n.d), Vol. 10, p. 175; Al-Dasuki (n.d), Vol. 4, p. 166); 7) if he committed homosexuality, would be subjected to Islamic punishments (Al-Sarakhs 1986, Vol 11, p. 78; Ibn Qudamah, Vol 10, p. 175).

Overall, in the Islamic tradition, erotic effeminacy is morally so abhorrent a behavior that if a person calls a normal Muslim a *mukhannath*, he will be charged for libel punishable by flogging amounting to twenty lashes at the discretion of the judge (Al-Tirmidhi 1988, Vol. 4, p. 62; Ibn Qudamah, Vol. 10, p. 202; Al-Shirbini, Vol. 3, p. 369; Ibn Saïd (2011), Vol. 16, p. 216).⁹

Khuntha on the other hand, juridically refers to an intersex or an individual with gender ambiguity upon birth. For instance, Ibn Qudamah defined a *khuntha* as, “a person with both male and female organs or with an opening in place of a sexual organ from which he urinates” (Ibn Qudamah, Vol. 6, p. 221; Al-Dasuki, Vol. 4, p. 489). To integrate *khuntha* into the social system and law, classical jurists divided them into two sub-categories: non-problematic hermaphrodite (*khuntha ghayr mushkil*) and problematic hermaphrodite (*khuntha mushkil*).

Non-problematic hermaphrodite was a person with both male and female genitals capable of being assigned a sex type based on the dominant function of one of the two. For instance, he would be regarded as a male if he shows male signs such as urinates from the penis, ejaculates semen, grows facial hairs. On the contrary, if such a person developed female bio-physical characters would be classified as a woman (Al-Sarakhs, Vol. 30, p. 130; Al-Hattab, Vol. 6, p. 430; Al-Bahuti 1982, Vol. 2, p. 594; Al-Shirbini, Vol. 3, p. 29). Problematic hermaphrodite, on the contrary, was a person who would not transform to one of the sexes; for instance, he continues to urinate from both the penis and the vagina (Ibid). With the progress of modern technology in medicine, the problem of the second type would be solved. Because medical criteria for sex determination goes beyond the physiological function of genitals, by looking instead to the composition of sex chromosomes, sex gonad, supernal gland, womb and fallopian tube, testes, etc. That is why to al-Bar and Kazimi today medical doctors are better equipped to distinguish between a real female hermaphrodite with the appearance of a man (female pseudo hermaphrodite) and a real male hermaphrodite with the external signs of a woman(male pseudo hermaphrodite) (Al-Bar 2007, Vol. 6, p. 354; Al-Khaqani 2011; Al-Amin 2011a, b; Sanders 1991, pp. 74–95).

A question then arises: What is the position of Islam on medical intervention to correct sex abnormality? Modern jurists while validating it in the case of hermaphrodite disputed its legitimacy in the case of effeminate individuals mainly because in the former case, it is regarded as a legitimate medical reason, but in the latter it is considered as cosmetic impelled with malice of defying God's ethico-legal imperatives.

⁷ This is held by Ibn Taymiyyah who even doubted the permissibility of greeting them. See Ahmad ibn Abd al-Halim , *Mujmuât al-Fatawa* (Beirut: Dar al-Kutub al-ilmiyah, n.d), 15: 321.

⁸ Al-Hattab, *Mawahib al-Jalil*, 3: 342. But this is not upheld by the majority. See Ibn Qudamah,*al-Mughni*, 11:36.

⁹ This held to be a ruling base on a Prophetic tradition. See Al-Tirmidhi, Muhammad ibn isa (1988), 4:62.

Accordingly, jurists have a consensus that sex change mechanisms to restore malformation in the case of a hermaphrodite cannot be disputed as it is legally sanctioned by Islamic law. For instance, the Sunnah ordains Muslims to seek medical treatment, “God has not created ailments except that He has anticipated by His will a cure for it” (Ibn Majah (n.d), Vol. 2, p. 252). And, “O Servants of God seek medical treatment for your ailments” (Ibid). The Prophet also commanded the removal of the harms and their after effects when he said: “Harm shall neither be inflicted nor reciprocated” (Ibn Majah, Vol. 2, p. 60). Accordingly, since such a person has no ulterior motive of hiding his real identity but recovering it by such an action provides further moral reason for the legitimacy of seeking medical help to that effect (Bushiah (n.d), pp. 471–472).

However, the debate rages over the validity of medical treatment for transsexuals. There are supporters and opponents, the gist of whose arguments we present here.

The opponents, being the majority, represented by official bodies of Sunni jurists affiliated with the Assemblies of Fiqh Academies argued against it on the basis of the following grounds:

1. It amounts to tampering with one’s God-made nature in consonance with the primordial evil handiwork of Satan (Qurān, 5: 119; Al-Shangiti (n.d), p. 135).
2. Its ultimate objective is to alter one’s social sexual role from the one created by God to that of the opposite one, hence, *ultra virus* of the Prophetic prohibition on effeminacy and masculinity as we referred earlier on (Ibn Hajar 1985, Vol. 10, p. 333; Mansur (n.d), p. 204);
3. It is mostly done with the intention of hiding one’s true identity thus is a kind of deceit which is *haram* by virtue of the Prophet’s saying, “anyone who plays deceit does not belong to our community” (Ibn Majah, Vol. 2, p. 23; Bushiah, p. 480);
4. Since its surgery involves de-capacitating one organ with the intention of replacing it with a cosmetic one, it is akin to castration which was prohibited by the Prophet when he forbade his companions from doing so (Al-Bukhari (n.d), p. 936; Al-Qurtubi (n.d), Vol. 5, p. 391; Al-Shangiti, p. 136); and
5. It is not only unnecessary from medical point of view, as it is resorted not for medical reason/lawful reason but cosmetic motivation, it also entails post-surgery or hormonal therapy complications, thus is prohibited in Islam by virtue of the Prophetic edict on unlawfulness of self-inflicted injuries on one’s inviolable person. To top it all, the person doing it finds it hard to be socially accepted by the rest of the Muslim communities, thus placing him under unbearable psychological stresses of unwarranted type (Bushiah, pp. 489–490; Salih 2003, Vol. 19: 2, p. 58).

The proponents, Shiāh Imamiyyah and some Sunni jurists, however, are of the view that the regulated use of sex-change medical intervention can be tolerated because: first, although being unlawful, it will become permissible on account of dire need of transsexuals by virtue of a well-known legal maxim, “necessity overrides prohibition” (Mawlawi 2011). Secondly, it does not amount to tampering with one’s God created innate nature but is a remedy/treatment for a transsexual’s psychic-pathological condition (Ibid). For instance, one anonymous medical doctor protagonist strongly believes that transsexual tendency is biological in nature and a sickness when she said: “the psycho-sociological theories attributing transsexual tendencies to social factors and family upbringing are mere myths.” To her, instead, it is a biologically mandated phenomenon, namely these individuals’ sex brain region is responsible for generating sexual feelings which are contrary to their anatomical makeup. As a matter of fact, these abnormalities in a fetus develop due to some hormonal abnormalities which affect its genes and consequently its sex brain cells

before birth. Accordingly, after the birth, such a child starts to display the feelings of reverse gender from the age of three. Therefore, to her, this is a kind of inborn defect with which a child is born, and no other remedies can work for him/her except a sex-change medical intervention. This should, indeed, be allowed in Islam as, firstly, it does not amount to changing ones inborn nature but restoration of something amiss in him/her. It is analogous to the lawfulness of undergoing surgery to replace one's a malfunctioned organ, which in no way is regarded as tampering with one's nature. Secondly, the jurists who oppose it have not adequately pondered over the ensuing immoral consequences of their verdict for transsexuals, namely who out of no legitimate outlet would express their aberrant feelings by way of homosexuality or lesbianism? (Anonymous lady medical doctor 2007; Kamali 2011).¹⁰

Niya of Shiâh Imamiyyah representing his sect's position echoes the same by maintaining that unlike the Sunni jurist who by classifying sex reassignment at the behest of transsexuals as tampering with one's God created nature, the Imamiyyah holds the contrary. To us, this is a kind of treatment for gender-dualism sickness and as such does not amount to altering one's primordial nature but seeking medication which is lawful in Islam. That is why Khumayni issued a verdict on the treatment of transsexualism by way of hormonal therapy. Practically, 700 sex change operations take place annually in Iran (Karimi Nia 2011).¹¹

Lastly, Mawlawi, one of the chief proponents of this group disputed the understanding of textual evidences adduced by majority to oppose the permissibility of sex reassignment. To him, the Prophet's prohibition of men resembling women and *vice versa* has no bearing on this issue. The reason is that to construe the prophetic tradition in a sense that it prohibits all forms of effeminate resemblance on the part of a *mukhannath* is not correct. This is evident from the context of the *hadith* as some noted classical jurists like Ibn Hajar tried to construct. For instance, he held that if the *mukhannath* was unable to correct his effeminate voice and speech, he must be medically treated. Accordingly, it is clear that the *hadith* in question does not cover a transsexual of anatomical type who is intrinsically engineered to feel to be the other sex. As such this kind of condition is nothing but an illness which needs to be healed and not touted, "cursed and condemned" (Ibid).

Nevertheless, the opponents disagreed by saying: first, the maxim, necessities render prohibited permissible when the urgency is to save human life or limbs. Hence, the case of transsexual does not qualify as such as it does not fulfill the requirement of being a condition of extreme necessity (*darurah muljiâh*) which is intended by the maxim; secondly, the contention that sex change does not come within the purport of prohibition in the *hadith* on "resemblance" to the opposite sex is not valid. Because according to Ibn Hajar, the *ratio legis* of the Prophetic injunction was to prohibit the alteration of a thing from its original state. Thus, sex change affects such a transformation and thus, is covered by the

¹⁰ Anonymous lady medical doctor, *Marad Idtirab Hawyah al-Jinsiyyah wa Âmaliyyat Tahwil al-Jins*, accessed May 15, 2011, from http://www.amjaonline.com/ar_f_details.php?fid=22813. Kamali seems to express similar sentiment by invoking some general provisions of the Qurâن on human nature, human dignity, prohibition of oppressing other fellow humans and Islamic fraternity to address the legal limbo faced by the transgenders and transsexuals in Malaysia. Nevertheless, such a simplistic treatment of the issue cannot rebut the rigor of arguments by the opponents. See Kamali, Muhammad Hashim (2011).

¹¹ Karimi Nia, Muhammad Mahdi (2011). It is to be noted that Imam Khumayni reportedly did not distinguish between psychological and biological transsexuals as he predicated his *fatwa* (verdict), 47 years ago, on the caveat, "a woman feeling trapped in the body of man or vice versa." See Anonym, *Amalyat Taghyir al-Jins fi Iran*, accessed May 29, 2011, from http://transshelp.blogspot.com/2009/06/blog-post_28.html.

law in question (Bushiah, pp. 492–495; Kasule 2011). Thirdly, al-Qaradawi argued that in Islam not every feeling can be allowed to manifest itself into outward actions particularly if it is impelled by vain desires (Qurn, 13: 39; A-Qaradawi 2011). Lastly, The Fatwa Committee of the Assembly of Muslim Jurists of America challenges the biological imperative argument. It, among other things, considers the hermaphrodites also as transsexuals but born with “a congenital deformity in the reproductive organs” whose legal status is clear in Islamic law. The second category consists of those who were born anatomically as males or females but “transformed themselves into females or males via hormone replacement or surgery.” However, such medical intervention in their case from the genetic point of view does not transform them into totally different genders (their genotypes remain as before i.e., xx or xy). For instance, an effeminate male transgender can only have a new reproductive organ with no ovary and uterus to have a baby. Thus, for all practical purposes, he would be treated as a hermaphrodite after transition entailing complicated legal issues if he had children prior to that (The Fatwa of the Permanent Fatwa Committee of the Assembly of Muslim Jurists of America 2007).¹²

To top it all, to the majority of the jurists, changing one’s sex entails change in one’s legal personality and consequently is a matter of serious implications for a Muslim in terms of marriage, inheritance, socialization, and most importantly one’s acts of worship. A transgender’s marriage is invalid as he or she is not a real male or female. The portion of his/her inheritance would either be reduced or increased which will be *ultra virus* of God’s variant limits of shares based on gender and so forth (Sachidina, pp. 194–195; Al-Hattab, Vol. 5, p. 148; Sad 2011, pp. 84–89).

Critical Appraisal

The foregoing juridical divide at macro-level represents a tension between idealism and pragmatism. The opponents are carried by idealisms of adhering to non-negotiable principles of preserving one’s primordial nature, avoiding infliction of unnecessary harms to one’s person, thwarting moral deviation on account of reversing one’s role contrary to one’s anatomical gender nature. The supporters on the other hand, while agreeing with the above, by and large, invoked the principle of necessity to counter balance the legal prohibition with the predicament faced by the transsexuals.

A non-partisan evaluation of the above, in the case of psychological transsexuals, would lead us to submit the following:

1. Sex-change medical procedure whether by way of hormonal therapy or surgery undoubtedly entails altering one’s nature, changing one’s born-gender role and involving a painful experience if it obtains via surgery. It is thus prohibited according to majority but justifiable by their opponents. However, since such a change is not real as argued by the opponents, one may retort by saying that it does not worth trying it. To top it all, transsexuals’ ordeal of reintegration to society would make it all the more unnecessary as is evident from the reality on the ground in Muslim majority countries like Iran and Malaysia. For instance, according to Bahram Mir Jalali, a famous sex

¹² *The Fatwa of the Permanent Fatwa Committee of the Assembly of Muslim Jurists of America*, accessed May 16, 2011, from http://www.amjaonline.com/en_f_details.php?fid=21701. The same view was upheld by the Conference of Rulers in Malaysia in 1983 and Conference of Jurists in Al Azhar in 1988. See Anonymous, *Gender Identity and Islam*, accessed May 18, 2011, from <http://www.safraproject.org/sgi-genderidentity.htm>.

reassignment surgeon in Iran, in spite of religious legitimacy of sex-change mechanism and procedural facilities in Iran, the next of kin of transgenders find it hard to accept them back once they have changed their gender status (Anonym 2011a, b).¹³ The scenario is gloomier in the Sunni world. For instance, in Malaysia even transvestite, men impersonating woman are not tolerated. For instance, in April 15, 2011, a famous local singer by the name of Kajol was nabbed by anti-vice officers from Kelantan Islamic Affairs Department for indecently dressing in public during a performance in the state.¹⁴ Sex change for male transsexual Muslims is not a happy option at all in the Malaysian society as they cannot change their gender in their National Identity Registration Card (NIRC). For example, the High Court in Kuala Terengganu refused such an application by Ashraf Hafiz Abdul Aziz now Aleesha Farhana, a transgender who underwent sex-change operation in Thailand 3 years ago. The prosecution contended that her female nature is external and not internal and the judge said that there is no psychological evidence to suggest that the operation has turned him into a natural woman.¹⁵

2. Nevertheless, the supporters score a point, on consideration of undesirable consequences of denying transsexuals the option for sex reassignment. For instance, in Iran homosexuality carries capital punishment, thus legalizing sex change is a savior for those feeling the other way. In the Sunni world, such as Malaysia, however, according to Khartini Slamah, a transsexual and activist, the situation is not promising when she says: “We are all in a dilemma”. We are Muslims. They (religious authorities) say this is not allowed, but they never tell us what the options are. I felt like it is being used to oppress. But I know that religion, “Islam is so flexible.” (Liau Y-Sing 2007). She also says that we are not gay men or transvestites as the society has “located us” (Ibid). Nevertheless, the good news is that in Malaysia unlike Iran, they are not punished with death penalty although they will be subjected to imprisonment or fines if dressed like women in public. Their further predicament is that if they cross-dress would have no choice but to become prostitutes as they cannot seek other employments as men dressed like women.¹⁶ A question arises? Can they be allowed sex reassignment in

¹³ Anonym, *Āmalyat Taghyir al-Jins fi Iran*, accessed May 29, 2011, from http://transshelp.blogspot.com/2009/06/blog-post_28.html.

¹⁴ I would rather die than be a man, says singer, April, 21, 2011, accessed May 27, 2011, from <http://thestar.com.my>.

¹⁵ See Man seeks a woman's name, May 26, 2011, accessed May 28, 2011, from <http://thestar.com.my>. The courts even in the case of non-Muslim transsexuals have made conflicting decisions in Malaysia. For instance, the Court refused it in the case of Wong Chiou Yong v. Pendaftar Besar/Ketua Pengarah Jabatan Pendaftaran Negara, but allowed it in the case of J.G v. Pengarah Jabatan Pendaftaran Negara. Wong was born with two sex organs and registered as a female but according to psychiatrist was mentally a man and physically a woman. He changed his sex and wanted to alter his NICR but the court held that there is no law to re-register a transgender. Nevertheless, in the second case, where the plaintiff, a born male, became a female after sex reassignment was granted his plea as the court held that his appeal was supported by sufficient medical evidence. For full analysis, see JEFFREY JESSIE, *RECOGNISING TRANSEXUALS*, November 17, 2005, accessed May 29, 2011, from http://www.malaysianbar.org.my/.../jeffrey_jessie_recognising_transsexuals_by_honey_tan_lay_ean.html. The same position was reiterated by Justice Datuk Mohd Yazid Mustafa, in the case of Mohd Ashraf who after undergoing sex change operation wanted his name changed into Aleesha Farhana. Among others, He contended that “plaintiff did not satisfy three other criteria for being declared a woman—chromosome count, and exterior as well interior organs.” See FARIK ZOLKEPLI, “Man fails in bid to be legally declared a woman,” July 18, 2011, accessed on July 18, 2011, from <http://thestar.com.my/>.

¹⁶ Tasha was one of such case of cross-dresser in 2007. See *Malaysia's transsexual left in limbo*, accessed May 28, 2011, from <http://beta.dawn.com/wps/wcm/connect...in-limbo-ss-07>. According to Teh, more than half of male

order to save them from vice? We believe that given the sociocultural conditions in this part of the Sunni world, an affirmative answer may not solve their problems. The reason being that the apparently altered sex orientation may help their problem of sexuality but not their reintegration into the sociocultural structure. This is especially so when they cannot lawfully be married as they are not regarded as real women. Accordingly, the only outlet open for them to fulfill their carnal desire is sex industry or homosexuality, both of which have no legitimacy within the moral paradigm of Islam. However, we were unable to appraise the Iranian experience though unhelpful for easing the problem of transgenders in a predominantly Sunni society like Malaysia.

Legitimacy in Christianity

Human sexual behavior and variations have been the subject of scientific inquiry and theoretical analysis. Sex role or sometimes gender role is used synonymously to those behaviors understood or expected to characterize man and woman within a society or culture. Gender identity, sexual orientation and sex role are now becoming a disturbing issue particularly from a religious perspective.

Religious traditions in sexual ethics and sexual understanding have had a long history and a great influence on people and attitudes both within and outside the Roman Catholic Church up to the present day. Genital sexuality can be fully expressed only within the context of indissoluble and permanent marriage of male and female, and every sexual act must be open to procreation and expressive of a love union (Curran 1992, ol. 17, pp. 17–35).

Within the general outlines of religious teachings, sexual relations and marriage are well understood. But events in the development of medical science tend to bring into the open the traditional aspect of sexual relations and marriage, particularly, on the aspect of sex change (Rispler-Chaim 1993, p. 44).

Transsexuals believe they are a member of the opposite sex. They identify completely with the opposite sex. This belief—and desire—is summarized in the favorite phrase of the male transsexual: “I’m a woman trapped in the man’s body.” The ultimate aim of transsexuals is to obtain a “sex change operation”—surgery that will alter their bodies to that of the opposite sex” (Levine and Lothstein 1981, Vol. 87, pp. 85–113).

Transsexualism is often confused with transvestites and homosexuals. Both transvestites and homosexuals generally maintain their own gender identity concordant with gender assignment and socialization. They differ from the norm, however, in that homosexuals manifest sexual orientation toward members of their own sex, while transvestites exhibit a predilection for dressing as a member of the opposite sex (Hargreaves 1986, p. 13). Instead, the transsexual claims that “she” relates to men as a woman does.

Footnote 16 continued

transsexuals, called Mak Nyahs in Malaysia “in spite of Welfare Department financial help for them to set up tailoring shops and beauty salons,” are involved in sex industry. See Ong Ju Lynn, *Misconception About Transsexuals*, October 2, 2000, accessed May 28, 2011, from, <http://thestar.com.my>. To address these peoples predicament, local civil societies voice their protest under the name of safeguarding the right of sexual minorities. See *Religious fundamentalisms in Muslim societies: the impact of the religious right on sexual and reproductive health and rights*, accessed may 28, 2011, from <http://www.thefree.library.com/Religious+fundamentalisms+in+Muslim+societies%3A+the+impact+of+the-a0219451132>.

Transsexuals may seek hormonal supplements to give their bodies the contours and secondary sexual characteristics of the other sex such as breasts and facial hair. If sufficiently affluent and well motivated, many seek sex reassignment surgery (Griggs 1998, p. 24).

In the West, the sex change or sex reassignment surgery is allowed. In the Netherland, the Dutch health services reimburse the cost of sex reassignment surgery, and individuals can assume a new legal identity after completing surgery and treatment (Galliano 2003, p. 274). The origin or causes of gender dysphoria are unknown. Tests of various biological and psychological hypotheses regarding the cause of this phenomenon have produced inconclusive results (Green 2005, Vol. 29 (5), pp. 499–508).

After the sex change operation, the gender reassignment process normally involves gradual adoption with the dressing, mannerisms and general lifestyles of the desired gender. In this part of transition, a special trained counselor may be required.

Undeniably, there will be tension between the right of humans on the choice of gender and the aspect of ethico-legal dimensions. From a human right perspective, it presents a dilemma as it pertain to the person's right for the choice of gender and it demands respecting his or her choice of autonomy. But from religion ethical values, the sanctity of human life, the aspect of body and soul, is an important ideal in the realm of morality and ethics. Because it is a gift from God, life, that is, body and soul, must be sustained to the extent reasonably possible, and that all measures must be taken to preserve it.

In medical practices, there are serious contentions involving two competing theories that evolve about the nature of health care. One is the aspect of curing which is the traditional medical ethical principle that argues that it is the moral duty of a medical practitioner to render medical services when required. The second approach is the aspect of caring which differs from the curing model in that the consequences of the action determines its morality, rather than the action itself (Mellert 2000, pp. 17–18).

Despite the numerous writings that keep growing on the subject of sex reassignment and transsexualism, the debates on the matter never seem to stop. This in fact represents a reflection of the fact that we are at the cross-roads between the smaller question of individual human rights and the larger question about the purpose of being alive.

Christianity on Sexual Relations and Marriage

In this section of the paper, we turn more explicitly to the issues of transsexualism and Christianity. In the complex question of love, sexuality and gendered human relations in the contemporary world, religious conservatives often hold beliefs that are at variance from those of scientists, researchers and religious liberals. Christians regard the functional principle of lifelong union of partnership is the union of a man and a woman. Thus, Christians view the sexual relations between a man and a woman in the context of marriage.

The *Old Testament* contains many verses to denote that sexual relations of human beings are between a man and a woman. In Genesis 2: 18–22:

And the LORD God said, It is not good that man should be alone; I will make him a helper as his partner ... So the Lord God caused deep sleep to fall upon the man, and closed its place with flesh. And the rib that the LORD God had taken from the man he made a woman and brought her to the man (The Holy Bible, Genesis 2: 18–22).

In the above passage, God is said to have created Eve from Adam's ribs. This is to provide Adam with a companion. Eve was a woman and was not a transsexual, and this would have thwarted God's plan of a man and a woman relations.

A more compelling version of a man and a woman relationship is from the passage of Genesis which reads as

So God created humankind in his image, in the image of God he created them; male and female he created them. God blessed them, and God said them, "Be fruitful and multiply, and fill the earth and subdue it; and have dominion over the fish of the sea and over the birds of the air and over every living thing that moves upon the earth (The Holy Bible, Genesis 1: 27–28).

While marriage is honored among Christians and throughout the Bible, it is not seen as necessary for everyone, as there are those who had chosen to remain unmarried. There is no suggestion that Jesus Christ was ever married.

Conservative Christians on Sex Reassignment and Transsexuals

Most conservative Christians believe that human beings are created as either male or female. The binary system is set up so that men and women could fulfill their different God-given roles in the family, in the workplace and in society. Thus, most conservative Christians oppose any form of minority gender or sexual expression in homosexual behavior, same-sex marriage, sex reassignment surgery or transsexualism.

The Christian traditions, in view of the Biblical teachings, have frequently affirmed that transsexualism or the change of gender is religiously wrong. The Bible clearly specifies that such acts will be excluded from the mercy of God.

No one whose testicles are crushed or whose male member is cut off shall not enter the assembly of the LORD. Those born of an illicit union shall not be admitted to the assembly of the LORD. Even to the tenth generation, none of the descendants shall be admitted to assembly of the LORD (The Holy Bible, Deuteronomy 23: 1–2).

The ruling is a strict prohibition to alter or change of gender of a person. A man by the virtue of the above passage is not allowed to change his gender to become a woman or he and his descendants will be deprived of God's mercy.

Another strong condemnation of transsexualism is the passage of Deuteronomy which reads as

A woman shall not wear a man's apparel, nor shall a man put on a woman's garment; for whoever does such things is abhorrent to the LORD God (Holy Bible, Deuteronomy 22: 5).

The biblical verses of the *Old Testament* clearly demonstrate that the wearing of the opposite gender's garment is strictly prohibited. However, the above passage is perhaps the most ignored passage of the Bible today. Girls and women commonly wear apparels such as pants, jeans and slacks that are essentially worn by men.

Another passage from the *Old Testament* which the conservative Christians view that as a clear commandment that God intends to create men and women only, is as follows:

Just as you know how the breath comes to the bones in the mother's womb, so you know the work of God, who makes everything (The Holy Bible, Ecclesiastes 11:5).

The above passage points out those human beings cannot know how a fetus is formed in the body of a woman. This is in fact the handiwork of God and cannot be fully understood. This implies that we must accept, value and support God's creation, including new born babies and their genders.

The *New Testament* of the Holy Bible also contains several passages that oppose transsexualism. An example of such connotations is the following passage:

Shun fornication! Every sin that a person commits is outside the body; but the fornicator sins against the body itself. Or do you know that your body is a temple of the Holy Spirit within you, which you have from God, and that you are not you own? (The Holy Bible, 1 Corinthians 6: 18–20).

Similarly, in another passage of the *New Testament* of the Holy Bible, the commandment from God is to avoid people who only seek love and pleasure from their own gender and other worldly glitters and pleasures.

For people will be lovers of themselves, lovers of money, boasters, arrogant, disobedient to their parents, ungrateful, unholy, inhuman, implacable, slanderers, profligates, brutes, haters of good, lovers of pleasures rather than lovers of God, holding to the outward form of godliness but denying its power. Avoid them! (The Holy Bible, 2 Timothy 3: 2–6).

Some religious conservatives have used the above verse to condemn transgendered people. Since the individual is probably attracted to men, he is regarded as homosexual, hedonistic and without natural affection or self control.

Liberal Christians on Sex Reassignment and Transsexualism

While the conservatives take a biblical and literal view of marriage between a man and a woman, so do the liberal Christians, Liberal theological Christians, in keeping with the overall view of individualism and interpretation, have taken a much more encompassing view of marriage. With a wider acceptance of humanity's infinite variety and accepting that theological and philosophical tenets change as humanity progresses, the definition of marriage now is evolving to include marriage of those of the same sex.

This new kind of relationship involving of those of the same gender is often made possible as the liberals find passages from both the *Old Testament* and the *New Testament* to echo their sentiments or preference. There are numerous passages in the Holy Bible about people whose gender is considered blur, particularly, the eunuchs.

Eunuchs are people assigned as male at birth, and later castrated. Technically, transsexuals fit that narrow definition, although eunuchs generally lived as men after castration. The custom appeared throughout Asia and peaked during the Byzantine Empire. The practice was used for servants in royal households and to a lesser extent, in harems (Hastings 1908, pp. 580–581).

In the Old Testament, the eunuchs were given due recognition. The passage from Isaiah read as

For thus say the LORD: "To the eunuchs he who keep my Sabbaths, who choose the things that please me and hold fast my covenant, I will give, in my house and within my walls, a monument and a name better than sons and daughters; I give them an everlasting name that shall not be cut off (The Holy Bible, Isaiah 56: 4–5).

It was believed that the eunuchs were respected singers in cathedrals. Their full-throated voices were considered appropriate and inspirational form of praise to God. For such reasons, they were given special honor and recognition by God.

The New Testament is more assertive and receptive to the idea of eunuchs. The following passage has Jesus speaking directly about eunuchs:

For there are eunuchs who had been so from birth, and there are eunuchs who had been made eunuchs by others, and there are eunuchs who had made themselves eunuchs for the sake of the kingdom of heaven. Let anyone accept this who can (The Holy Bible, Mathew 19: 12).

There are many interpretations on the above passage. Conservative Christians would believe that this is a discussion of voluntary celibacy, but since God mentions people are born that way, it means it is a birth condition. Another literal interpretation would include inter-sexed (born that way) and transsexual persons (made that way). However, regardless of the interpretations, the main contention of the passage is that anyone may receive the kingdom of heaven.

There are several other passages of the *New Testament* which the liberals use to support transsexualism. One noted verse is the emphasis of the passage on the righteousness of a person.

Do not judge by appearances, but judge with right judgment (The Holy Bible, John 7: 24).

Another passage advocating the equality of human beings in the eyes of God is from Galatians which reads as

As many of you as were baptized into Christ have clothed yourselves with Christ. There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; all of you are one in Christ Jesus. And if you belong to Christ, then you are Abraham's offspring, heirs according to the promise (The Holy Bible, Galatians 3: 27–29).

Here, the liberal Christians' claim is to justify the right and support for transsexualism. Thus, God only considers a person's state of truthfulness and righteousness of deeds. In this sense, there is no form of discrimination of a person by virtue of his, her or the other gender.

Debates on Sex Reassignment and Transsexuals

In both Islam and Christianity, ethical values are integral to the prescriptive guideline that the system provides to the community. No legal decisions are made without a meticulous analysis of the various factors that determine the right and wrong of any case under consideration.

What causes gender identity disorder remains unknown? Among the possible biological influences are the effects of prenatal hormones. Although some findings indicate young boys whose mothers took female hormones during pregnancy may show less masculine behavior, but there is no evidence of resulting in gender identity disorder or adult transsexualism (Yalom et al., 1973, Vol. 28, pp. 554–561). It is also common for young boys to engage young girls during their childhood, and this does not really contribute to the

abnormal gender development. Similarly, family environment seems to have surprisingly little effect on the development of gender disorders (Rosen and Hall 1984, p. 41).

The merits of sex reassignment surgery have been vigorously debated. One influential study found that transsexuals who had undergone surgery were no better adjusted than those who had not (Meyer and Reter 1979, Vol. 48, pp. 129–142). The best estimate is that roughly two thirds of patients showed improved adjustment following surgery, with females-to-males faring better (Abramowitz 1986, Vol. 54, pp. 183–189). However, the negative outcome rate is significant—about 7 % has requested for a reversal, require psychiatric hospitalization or commit suicide (Wilson et al. 1991, p. 224).

Medical practitioners find themselves today confronted with the tension of curing and caring dilemma and having to make difficult decisions as part of the responsibility as a surgeon. Surgeons are forced to debate whether sex reassignment is the right thing to do and yet in the back of their minds know that such surgery can be easily be abused and raised moral questions involving the ethico-legal dimensions of a religion.

Conclusion

As far as the Islamic religion is concerned, the juridical work of Muslim jurists on transsexuals demonstrates a desperate attempt to reconcile the accepted norms with the need of the third sex. For biologically abnormal humans, they have tried to work out culturally defined mechanisms of sex reassignment and thus solving the problem of their crisis of personhood. In this way, they have resolved the problem of non-problematic hermaphrodite once and for all. As for the problematic hermaphrodites, they have formulated an interim solution pending the disclosure of their real personhood. Accordingly, medical science today can solve this dilemma with more certainty which was not possible then. When it comes to the question of *mukhannath*, again, the jurists are not fatalistic but prudent and proactive enough to draw a distinction between the clearly biologically mandated ones and those apparently artificial ones. Medical science together with psychological therapy can help rehabilitate the first category. In the whole process, therefore, medical technology in the form of both surgery and hormonal therapy is a legitimate option. But the question of using this to deal with social *mukhannath* is questionable on many legal and moral grounds as we have detailed in this study.

Similarly, Christianity comes to term with this profound and deep-seated evolution in the human meaning of sexual gender. Despite a vigorous guideline by the most conservative theologians, many Catholic ethicists have moved away from the center of sexual morality. To them, the social and moral tasks can never be confined to literal descriptions of the biblical texts. The understanding of sexual orientation and gender preference is simply a matter of the individual's decision. There are signs that they will be more tolerant in the future as some churches have even allowed gay marriages.

However, in the rigidly stratified Muslim and Christian societies, changing one's appearance to that of the opposite gender would be considered an abomination and taboo. The general feeling seems to be that allowing space for transsexuals would destabilize society as males become females and vice versa. As such this should not be allowed on theological consideration that the natural order of gender as God created phenomenon would be upset and there will be disorder in society.

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